

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 520 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

AHMEDABAD MUNI. CORPN.

Versus

VISHNUPRASAD S MISHRA

Appearance:

MR DC RAVAL for MR MR ANAND for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the appellant only
as none appeared for the respondent. The present appeal
challenges the order below the Notice of Motion dated
16.6.1993 made in Regular Civil Suit No.3666 of 1990

whereby the application of the present respondent was allowed whereby the appellant was injuncted from cancelling the selection list of peons of 1982 and from making any fresh appointment under its central office circular No.62 dated 10.11.1989.

2. The respondent was a candidate for the post of peon and was selected and kept in the waiting list at serial No.66 in 1982. It appears that the selection list was exhausted for appointment upto serial No.60 and that selection list was kept alive and its existence extended upto 7.3.1990. Thereafter, a direction was issued by the appellant to prepare a fresh list. The impugned order proceeds on the basis that the said direction to prepare a fresh list before cancellation of the old one was illegal. It is concluded that the old list ought to have been exhausted first and only thereafter, if any vacancy remained, a new list could have been prepared.

3. The observations and conclusions made in the impugned order, as above, cannot be sustained in law in view of the law settled in several judgments including AIR 1993 SC 2606 (HOSHIAR SINGH v. STATE OF HARYANA), 1998 (2) GLR 1262 (GONDALIA DHIRAJLAL BANABHAI v. STATE OF GUJARAT) and 1993 Supp (3) SCC 268 (BABITA PRASAD v. STATE OF BIHAR), as contended by the learned counsel for the appellant. In the facts of the last mentioned judgment, as pointed out by the learned advocate for the appellant, in fact, the future generations would have been kept out for a very long period had the panel been permitted to remain effective till exhausted. A panel of the type prepared in that case could not be equated with the panel which was prepared having co-relation to the existing vacancies or anticipated vacancies arising in the near future and for a fixed time and prepared as a result of some selection process. On the same analogy, the waiting list, according to the submissions of the appellant, would take many decades to be exhausted in the facts of the present case also; and as opined by Their Lordships, the existence of name of a candidate on the panel of selected candidates cannot be treated as conferring any vested or indefeasible right to be appointed as laid down by the Constitution Bench in SHANKARSAN DASH case [(1991) 3 SCC 47].

4. As held by the Hon'ble Supreme Court in HOSHIAR SINGH's case (supra), the appointment on the basis of an earlier selection and recommendation would deprive candidates who were not eligible for appointment to the post on the last date for submission of applications but who became eligible for appointment thereafter, of the

opportunity of being considered for appointment on the additional posts, because, if such posts are advertised subsequently, those who became eligible for appointment would be entitled to apply for the same. On this principle, the list of selected candidates cannot be kept alive beyond its prescribed period. In the facts of the present case, when the appellant decided to cancel in 1990 the select list prepared in 1982, it was neither illegal nor unreasonable and the trial Court has erred in holding that the direction to prepare fresh list before cancellation of the old one was illegal. The further conclusion that it was necessary that the old list should have been exhausted before preparing a new list has no legal basis and, therefore, cannot be sustained. In this view of the matter, this appeal is required to be allowed.

5. Accordingly, the appeal is allowed and the impugned order made below the Notice of Motion dated 16.6.1993 at Ex.6 in Regular Civil Suit No.3666 of 1990 pending before the City Civil Court, Ahmedabad is set aside. No costs.

Sd/-

(KMG Thilake)

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